IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 384 OF 2004

IN

SUMMARY SUIT NO. 1076 OF 2004

Lee and Murihead Ltd .....**Plffs.**
vs.
Donyi Polo Petrochemicals Ltd .....**Defnds.**

V.R. Dhond i/b. Negadhi Shah for the plffs.

Jaydeep Trivedi i/b. M/s. Jurists for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 20th September, 2005.

P.C. :.

1. The present suit is filed on the agreement which is reflected by letter dated 5.6.96 read with further correspondence and invoice. It is the case of the plaintiff that there was an agreement about warehousing the goods and inrespect of the said warehousing charges, invoices are raised. The

particulars of claim at page 53 are sets out the date of the invoices inrespect of which the said claim arises. The defendant has been served with the demand notice. However the defendant neither paid nor replied to the said demand notice and thus the present suit is filed.

2. Learned counsel for the defendant contends by relying upon the letter dated 18.6.96 that the appointment of the plaintiff was not merely as a warehouse keeper but was also a custom clearing agent for clearing, handling and forwarding inrespect of the said goods. However it is the case of the defendant that the said goods have been auctioned for nonpayment of the demurrage charges by the port trust authorities thus the defendant has suffered. The defendant is the importer of the goods. It was the duty of the defendant to effect clearance therein and the plaintiff even if he is a clearing agent have no liability to pay demurrage charges. In that view of the matter I find no merits in the defence raised.

3. However with a view to grant an opportunity to defend the suit, I directed the defendant to deposit a sum of Rs. 20 lacs in this court within a period of 4 weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposits of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

4. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from tje date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

sd/-

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